The Vice-Chancellor (Sir Lancelot Shadwell), in delivering his opinion, says, on page 347 :—

"But . . . my opinion is that there has been an error, which this Court will set right, namely, that when the directors thought to make the calls as they did, they stopped short of that which was their duty, and that they ought to have gone on to direct the same sums to be paid on each of these shares as had been directed to be paid upon the other shares. . . .

"Therefore, it is evident that in whatever manner it is to be done, this Court will rectify the error that has been made, and will take care that all the shareholders shall be put upon the same footing with respect to the liability to pay calls."

And knowledge of such an agreement at the time when the assessments were levied would not have justified the plaintiff in refusing to pay the same. *Dorman* v. *The Jacksonville Plank Road Co.*, 7 Fla. 265; *The Macon & Augusta R. R. Co.* v. *Vason*, 57 Ga. 314.

In *Macon & Augusta R. R. Co.* v. *Vason* the action was brought to collect an assessment. The defence set up was, that the directors had permitted other stockholders to pay their subscriptions in Confederate money, and that this act of the directors was illegal. The Court admitted the illegality, but held that it was no defence, saying:—

"We see no authority in the charter whereby the directors were empowered so to act. It seems to have been done *ultra vires* beyond the authority conferred, and the only trouble to the defence seems to be that no stockholder was released from legally called-for instalments by this illegal action of the board of directors, and that such instalments can still be collected from them in good money; or, at least, they can be made to contribute on a proper case made equally with this defendant."

The case, then, is reduced to this, the directors having called upon the stockholders for a payment of a portion of their stock subscription, the plaintiff, because of a want of confidence in the directors, sold his stock to the defendant. Under these circumstances he is not entitled to the relief prayed for.

The demurrer is sustained.

LECTURE NOTES.

OF THE LANGUAGE NECESSARY TO CREATE A TRUST. — (*From Professor Ames' Lectures.*)—Whether an instrument creates a trust is a question of fact in each case. The tendency now is to give the words their fair meaning, and many of the old cases would be decided differently at present.

If the distribution among the beneficiaries is left to the honor of the legatee or grantee there is no trust; he must be bound legally.

If property is left to "A, to pay debts," the residue, after the debts have been paid, will go to the testator's representatives; but, if the property is left "subject to the payment of debts," the residue goes to the trustee.

DEFINITION OF EVIDENCE. — (*From Prof. Thayer's Lectures.*)— The state of being clearly seen is the etymological meaning of the word. The French call those things evident which do not need proof, and

evidence is the corresponding noun. In our early law it had the same meaning as it did in Norman-French, and was used to denote writings or documents, as they spoke for themselves. In Smith's "Commonwealth of England," Book II., chap. 18, is an instance of this use.

The word gradually acquired a broader meaning, and in chap. 26 of the same book it is used to include "indices or tokens."

For a long time, however, it has had its present meaning, as may be seen in Finch's "Common Law" (1654), Book III., chap. 1, where it is defined as "anything whatsoever which serves the party to prove the issue for him."

Bentham's definition, as modified by Best, "Evidence is any matter of fact, the effect, tendency, or design of which is to produce in the mind a persuasion, affirmative or disaffirmative, of the existence of some other matter of fact," is perhaps a good one, but requires a definition of fact. This can be defined by nothing narrower than anything whatever looked at from a certain point of view; that is, as something on which to base an inference. For legal use it must be narrowed by excepting all reasoning in regard to the law of the jurisdiction in question. Evidence does not include this, nor does it include such facts as are taken for granted.

Whatever, therefore, must be shown to the Court is the subject-matter of evidence. As thus used it may include the persons of the witnesses, as well as what they testify, and also any object shown to the jury,—what Bentham and Best call real evidence.

STATUTE OF LIMITATIONS. JOINDER OF TIMES BY SUCCESSIVE DISSEISORS. — (*From Prof. Gray's Lectures.*)—The consecutive possessions of successive independent disseisors, although without privity of estate between them, can, perhaps, be tacked together to give the continuity of disseisin required by the Statute of Limitations. Thus, if A adversely occupies B's land for ten years, and is then disseised by C, C, after ten years' additional adverse occupancy of B's land, will have a good defence in an action of ejectment brought against him by B.

The case is not analogous to the acquiring of title to an incorporeal hereditament by prescription. The adverse user of an easement for the prescribed time gains an absolute title to the easement. To gain this title it is necessary that the adverse use should be continued for the entire time, either by the same person, or by successors who represent the same *persona* or estate. Therefore, if A, after adversely using a right of way for ten years over his neighbor's land is disseised by C, the disseisor, after ten years continued adverse user of the right of way, will have gained no title to the easement; a disseisor does not represent the *persona* of the previous estate, and cannot tack his time to that of his predecessor. (Holmes' Common Law, 368, and cases cited.)

The effect of the Statute of Limitations is different. The Statute 21 Jac. I. c. 16, from which our Statutes of Limitations as to ejectment are commonly copied, provided [S. I. (4)] that "no person or persons shall at any time hereafter make any entry into any lands, tenements, or hereditaments, but within twenty years, next after his or their right or title, which shall hereafter first descend or accrue to the same; and in default thereof such persons so not entering, and their heirs, shall be utterly excluded and disabled from such entry after to be made."